

GOVERNMENT OF ANDHRA PRADESH
A B S T R A C T

Tribal Welfare – East Godavari District – Revision Petition filed by Sri Medapati Buli Satti Reddy S/o Satti Reddy under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of Agent to Government, Rampachodavaram in CMA No.142/2005, dated 18-11-2006 – Allowed – Orders – Issued.

SOCIAL WELFARE (LTR - 2) DEPARTMENT

G.O.Ms.No. 62

Dated:09-06-2009

Read the following:-

1. From Sri Medapati Buli Satti Reddy S/o Satti Reddy, East Godavari,
Revision Petition, Dt:25/11/2006
2. Govt.Memo.No.14148/LTR-2/2006-1 Dt:4-12-2006.
3. From the HC of AP WP No.24844/06, dt.29-11-06.
4. From the Project Officer & ITDA, R.C.Varam, Lr.Rc.CMA/142/05,
Dt: 9/02/2007 and dt.8-3-2007.
5. Govt.Memo.No.14148/LTR-2/2006, Dt.:6-6-2007 and 4-8-07.

ORDER:

In the reference first read above, Sri Medapati Buli Satti Reddy S/o Satti Reddy R/o K.Yerrampalem vg. Ramchodavaram (M) East Godavari District has filed Revision Petition before the Government under Sec.6 of A.P.S.A.L.T.R,1959 against the orders of Agent to Government Rampachodavaram in CMA No.142/2005, dt.18-11-2006, in respect of lands in Sy.No.112 measuring Acs.7.90, Sy.No.50 measuring Acs.12.05, Sy.No.73 measruing Acs.18.57 and Sy.No.75 measuring Acs.22.75 (total Acs.61.27) situated in K.Yerrampalem, a scheduled village in Rampachodavaram Mandal of East Godavari District.. The main grounds submitted by the Revision Petitioner are under:-

- i) The lands situated in Sy.Nos.112, 50, 73 and 75 to an extent of Ha.24.81 situated in K.Yerrampalem village, Rampachodavaram Mandal, East Godavari District were purchased by father of petitioner under different registered sale deeds in the year 1961 with the permission of the Asst. Agent to Government as the lands are situated in the scheduled area.
 - ii) The Settlement Officer, Anakapalli in case No.1392, dt. 31.10.1980 granted Ryotwari Patta in his favour and his family members after conducting detailed enquiry under the AP SA Ryotwari Regulations 1970 (Reg.2/70) and it became final in the light of the decisions of the Hon'ble High Court of AP reported in 1983 (2) APLJ page 96, 1984 (2) ALT page 354 and 1998 (1) ALD page 783.
 - iii) the primary and the appellate authorities failed to see that the sale transaction had taken place prior to commencement of the Land Transfer Regulations.
2. The brief facts of the case are that the Spl. Dy.Tahsildar, Tribal Welfare, Rampachodavaram of East Godavari District filed a complaint before the Special Dy.Collector(TW) Rampachodavaram on 8.9.2003 stating that the non-tribal respondent Medapati Bulli Satti Reddy illegally acquired tribal lands in Sy.No.112 measuring Acs.7.90, Sy.No.50 measuring Acs.12.05, Sy.No.73 measruing Acs.18.57 and Sy.No.75 measuring Acs.22.75 total ACs.61.27 situated in K.Yerrampalem, a scheduled village in Rampachodavaram Mandal of East Godavari District in violation of provisions under Land Transfer Regulation Act 1/59 as amended by Act 1/70. The complaint was taken on file by the Special Dy.Collector (TW) Rampachodavaram numbered as LTRP 130/2003 and heard. Tribal Sarapu Jogidora was impleaded as 2nd petitioner in the case. The Special Dy.Collector (TW) Rampachodavaram heard both sides and passed orders on 24.8.2005 as ---

- 1) Admittedly there was a transfer of lands between tribal and non-tribal for the lands covered by S.No.112 (Ha 3.20) through Regd. Sale Deed No.1847/61, Sy.No.50 (Ha.4.88) through Regd. Sale Deed No.1850/61, Sy.No.73 (Ha.7.52) through Regd. Sale Deed No.1849/61, Sy.No.75 (Ha.9.21) through three Regd. Sale Deeds bearing Nos.2/62, 1848/61 and 1846/61, with the prior permission of the Spl. Asst. Agent, Rajahmundry vide orders in S.R.No.6/61, 5/61, 7/61, 8/61, 9/61

dt.15.12.1961 under LTR 1 of 1959. Although Spl.Asst.Agent was a designated authority under LTR Act 1917, no such authority was prescribed under LTR 1/59 as contended by counsel for tribal petitioner. The rules under the said Regulation 1/59 in 1969 did not prescribe the officer to accord permissions for transfer of lands between tribal and non tribals. The specific provision under LTR 1/59 is repugnant to the corresponding provision under the earlier Act I of 1917. As such the permission granted by the Spl. Asst. Agent, Rajahmundry for the transfer of lands between tribal and non-tribals in the year 1961 was without jurisdiction.

- 2) The subsequent conferring rights through different orders or issue of Ryotwari pass Book in favour of non-tribal respondents basing on such illegal transactions could not create any better title. Hence, the respondent had no rightful ownership over the PS lands and his possession was illegal and in violation of LTR 1 of 1959 as amended by 1/70.
 - 3) Under Regulation 2 of 1969, it is a pre-requisite condition for the non-tribals to seek Settlement Patta that their possession or occupation shall not be in violation of the provisions of LTR. In the case, it was very clear that the non-tribal claimants admitted gained access to the tribal lands in the year 1961 illegally and in violation of LTR 1 of 1959. As such the patta granted under Regulation 2 of 69 did not bind the authorities under this Regulation.
 - 4) In the light of the judgement of the Hon'ble Supreme Court in Samata case and another decision of the Hon'ble High Court of AP, the LTR Act has over-riding effect on any contrary determination under any other Regulations. Hence, the Settlement Patta granted in favour of non-tribal claimants did not validate the transfer of lands between tribal and non-tribal.
3. Aggrieved by the orders of Special Dy.Collector (TW) Rampachodavaram, the non-tribal (Sri Bulli Satti Reddy) preferred an appeal before the Addl. Agent to Government & Project Officer, ITDA Rampachodavaram. The Project Officer ITDA, Rampachodavaram disposed the appeal as CMA 142/2005 on 18-11-2006 as hereunder ---
- a) The Government of AP framed Rules under the AP LTR 1/1959 vide GO Ms.No.763, dt.11.8.1969 and the said rules did not prescribe any officer to act as "prescribed officer" under the Regulation 1 of 1959 to permit sales between tribals and non-tribals. As such, the permission granted by Special Asst. Agent, Rajahmundry was without jurisdiction and hence the sale transactions held between tribal and non-tribal were hit by LTR 1/1959 which was in force by that time.
 - b) In the light of these facts, the grant of Settlement Patta for these lands by the Settlement Officer in the year 1980 was in question. Anybody who claim a right under the AP Mutta Abolition and Conversion into Ryotwari Regulation 1969 (A.P. Regulation II of 1969) and also the A.P. Scheduled Areas Ryotwari Settlement Regulation 1970 (Regulation II of 1970) has to fulfill the conditions laid down under Section 7 of the said Regulation for a ryot who applies for a ryotwari patta shall be entitled to a ryotwari patta in respect of all cultivable land held by him, such land having been in his lawful possession and any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to grant of ryowari patta and such person has been in possession or in occupation of the land for a continuous period of not less than eight years immediately before the commencement of this Regulation for the ryots who is not a member of the Scheduled tribes and such a possession or occupation shall not be void or illegal under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 or any other law for the time being in force. It was observed that the Regulation 1 of 1959 came into force on 4th March, 1959 and the Regulation II of 1970 came into force on 3.3.1970 and the claim basing on the Ex.R1 (Settlement Order granting Settlement Patta in case No.1392/80 by the Settlement Officer) did not stand under the Regulation 1 of 1959 as there was no provision with regard to permission/sanction found in the Regulation. As the rules framed under LTR 1/1959 in the year 1969 vide GO Ms.No.763, dt. 11.8.1969 did not prescribe any

officer to act as Presiding Officer to permit sales between tribals and non-tribals, the Settlement Patta is not in consonance with the provisions of the LTR and for any contrary determinations, the LTR Act has over-riding effect in the light of Hon'ble Supreme Court judgement in Samatha Vs State of AP (AIR 1997 Page 3297) and GO Ms.No.68, dt. 19.7.2002.

4. Aggrieved by the orders of Addl. Agent to Government & Project Officer, ITDA Rampachodavaram, the petitioner filed Revision Petition before the Government on 27.11.2006.

5. In the reference 3rd read above, the Hon'ble High Court of AP in its WP No.24844/06, dt.18-11-2006 directed the 6th respondent (ie. Prl.Secy. to Govt.) to dispose off the Revision Petition and till such time suspended the order in LTRP No.130/2003, dt.24-8-2005 and also disposed off the Contempt case No.1328/06, dated 3-1-2007 in WP No.24844/06.

6. In the reference 2nd read above the Collector, East Godavari was requested to furnish parawise remarks and case records and the same were received from the Project Officer, ITDA Rampachodavaram, vide reference 4th read above. After examination of the parawise remarks and case records, notices were sent to the concerned to attend the hearing of the revision petition on 16-6-2007 and the case was finally came up for hearing on 16-8-2007 vide reference fifth read above. Counsel for petitioner present and argued corroborating grounds of RP. Sri K.Balagopal, Counsel for tribal respondent filed vakalat and prayed time for submission of written arguments and filed the following written arguments on 22-8-2007.

a) the petitioner has relied on the judgements of the High Court of AP reported in 1983 (2) APLJ 96, 1984 (2) APLJ 354 and 1998 (1) ALD 783. However, in Gadde Nagabhushanamma vs Government of Andhra Pradesh 1999 (5) alt 372, the High Court considered the earlier judgements and took the view that Regulation 1/70 being a special law for prevention of land alienation in tribal areas, it prevails over Regulation 2/70 and hence any determination made under the latter is no bar to enquire under the former, even though in an enquiry under Reg.2/70, a finding has to be recorded as to whether there has been violation of the provisions of Regulation 1/70. Thus, the mere fact that the petitioner or his predecessors were granted ryotwari patta does not operate as resjudicata for the present proceedings. Being a latter judgement that has considered the earlier judgements, this view prevails over those expressed in the cases relied upon by the petitioner.

b) It is true that in Kola Mahalaxmi Vs Agent to Government 1999 (6) ALT 174, the High Court of AP held that Regulation 1/70 does not affect past transactions i.e. transactions prior to the coming into force of Regulation 1/70. Hence, even if a non-tribal came into possession by illegal means prior to 1970, the enquiry under Regulation 1/70 cannot take note of it and evict him. However this view applies only to transactions that are merely illegal by virtue of not being duly registered or for violation of some such rule and not to transactions that are null and void ab initio under the Land Transfer Regulations. A transaction that is void ab initio under the Regulations confers no right whatsoever. It is not a question of jurisdiction but of the very existence of any semblance of a right. In the present case, the petitioner's right to the schedule land stems from a purchase from a tribal in the year 1961 without the permission of the competent authority. This is a null and void transaction evidenced by the very documents relied upon by the petitioner. As such the judgements relied upon by the petitioner have no application.

7. Government after examination of the record of lower, grounds of Revision Petition, written arguments of counsel for tribal respondent and other material available on record found that -----

i) The lower and appellate authorities have agreed that the transactions between tribal and non-tribal were held through registered sale deeds in the year 1961 with the prior permission of Special Asst. Agent but disallowed the claim of petitioner on the ground that the rules framed under Regulation 1/59 in the year 1969 vide GO Ms.No.763, dt.11.8.1969 did not prescribe any officer to act as "prescribed officer" to permit sales between tribals and non-tribals. Hence, the permission granted by Spl.

Asst. Agent, Rajahmundry was without jurisdiction and the sale transactions held between tribal and non-tribal were hit by LTR 1/59. Therefore, the Ryotwari Patta granted by the Settlement Officer, Anakapalli in case No.1392, dt. 31.10.1980 also did not confer any right as the LTR Act has over-riding effect due to the above contrary determination.

ii) As per sub-section (1) (ii) of Sec.3 of the APSALTR 1959 (prior to its Amendment by Regulation I of 1970) provided that notwithstanding anything contained in any enactment, rule or law in force in the Agency Tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe shall be absolutely null and void unless made with the previous sanction of the State Government or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer. Since no rules were made till 1969 under APSALTR 1959, the Government in Revenue Dept. vide Memo.No.325/TWII-1/70-5, dated 26.3.1971 issued clarification that the rules made under the Agency Tracts Interest and Land Transfer Act, 1917 (partly repealed by Sec.9 of the 1959 Regulation) would, therefore, continue to apply to all transfers of immovable property situated in the Agency Tracts made by a member of ST, till the coming into force of the Rules made under Regulation 1 of 1959, to the extent they are repugnant to the provisions of the said Regulation, by virtue of section 18 read with section 23 (B) of the Andhra Pradesh General Clauses Act, 1891. The Special Asst. Agent, Rajahmundry is therefore competent by virtue of the rules made under the Agency Tracts Interest and Land Transfer Act 1917 to accord permission for sale of land in question by tribals. Hence, the transactions held between the tribals and non-tribals in the year 1961 are thus valid and not violate of LTR 1/59.

8. Government therefore, set aside the orders of the Addl. Agent to Government & Project Officer ITDA Rampachodavaram in CMA No.142/2005 dated 18.11.2006 and allowed the Revision Petition.

9. The counsel for the petitioner is requested to inform his clients accordingly. The Collector, East Godavari / Addl .Agent to Government and Project Officer, I.T.D.A., Rampachodavaram are requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,
Prl. SECRETARY TO GOVERNMENT

To

The Collector, East Godavari District.

The Addl. Agent to Government & Project Officer, ITDA,

Rampachodavaram, East Godavari

(With RPAD for the following records)

1. LTR Case file No.130/03,containing pages (1-140)

2. Agent to Govt. Khammam CMA No.142/05 taining pages.(1-140).

The Spl.Dy.Collector,(TW) . Rampachodavaram, East Godavari

Sri Medapati Buli Satti Reddy S/o Satti Reddy

R/o K.Yerrampalem vg. R.C.Varam (M) East Godavari District

Sri K.Venkatesh, Advocate,

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Sri Sarapu Jogi Dora S/o Bapanna Dora

R/o K.Yerrampalem vg. R.C.Varam (M) East Godavari.

Copy to

Sri K.Bala Gopal, Advocate,

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The P.S. to M (TW & RIAD)

FORWARDED:BY ORDER

SECTION OFFICER